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April 4, 2002

Chairman Michael K. Powell
Federal Communications Commission
445 Twelfth Street, SW, Room 8B201
Washington, D.C. 20554

Re: *In the Matter of: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,*
CC Docket No. 01-338, 96-98 and 98-147

Dear Chairman Powell:

I write in response to the Commission's pending proceedings to reassess the rules governing local competition and the deployment of advanced services pursuant to the mandates of the Telecommunications Act of 1996. While the Act has successfully spurred the rapid and broad deployment of advanced services, it has been far less effective in fostering the meaningful local competition that Congress envisioned and consumers deserve. It is therefore imperative that the Commission reinforce its current UNE unbundling rules and remove the current restrictions on UNE availability that not only impair competitors' ability to enter the local market, but also significantly reduce their incentives to deploy their own alternative facilities.

To be sure, the Act affords potential competitors three means to enter the local market in competition with the ILEC: (1) construction and interconnection of one's own facilities with those of the ILEC; (2) leasing of ILEC UNEs; and (3) resale of the ILEC's services. In keeping with the letter and spirit of the Act, the Commission embarked on the unprecedented task of developing rules to implement these statutorily mandated means of entry. Not surprisingly, however, the ILECs saw little reason -- economic or otherwise -- to cooperate in the erosion of their local monopolies. Even the promise of



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long distance market entry proved an inadequate incentive to prompt the ILECs to adhere to the market-opening rules and policies of this Commission. In further confirmation of the difficulties associated with penetrating the local markets, the Bell companies themselves have – one by one – abandoned their oft-asserted plans to enter out-of-region local markets in competition with each other.

Nonetheless, after tens of billions of dollars of investment and more than half a decade of effort, a number of other carriers, including AT&T, have, at long last, begun to make meaningful inroads into the local markets. AT&T alone has:

- deployed more than 115 local telephone switches in over 60 markets across the Nation,
- re-engineered more than 200 long distance switches to provide local services to large business customers,
- established over 1000 collocations in ILEC switching offices, including 80 sites newly refurbished to provide integrated voice and DSL services to consumers, and
- installed more than 17,000 route miles of local fiber directly connecting approximately 6,000 business customer buildings to our network.

In aggregate, AT&T currently provides local service to approximately 3 million business voice grade equivalent lines and about 1.3 million residential consumers. Wherever technically and economically feasible – generally to serve the very largest business locations – AT&T provides local telecommunications services over its own facilities. In most cases, AT&T has no choice but to use UNEs in conjunction with its own switching and other facilities to serve even large customer locations. But notwithstanding long and varied efforts to do otherwise, for the vast majority of consumers, including residential consumers and low volume business locations, we have little alternative but to provide local services using leased ILEC facilities in the configuration that has come to be known as the unbundled network element platform or “UNE-P.”

That the Telecommunications Act of 1996 can work is being proven every day in states like New York, where the leadership and commitment of the New York Public Service Commission is making it work. Indeed, after years of effort to obtain the right rates and conditions, UNE-P is, in some states, beginning to be a viable method for providing local service. In New York, AT&T along with numerous other carriers compete vigorously with Verizon for local service customers. Because of CLEC efforts to date, nearly 3 million business and residential lines are now served by competitive carriers. In the residential market, Verizon estimates that UNE-P is used to serve about 1.7 million customers – nearly the same number of customers served by cable providers nationwide. Moreover, contrary to ILEC predictions, the availability of UNE-P is spurring AT&T and other firms to increase their facilities construction, as we build out to

serve our growing customer base. Verizon estimates that CLECs in New York serve at least 1.27 million lines using their own facilities.

The competitive opportunities created by New York's vigorous enforcement of the Telecommunications Act are leading to both product and price innovation. In the residential market, where AT&T uses UNE-P to provide local voice service, we introduced an innovative price guaranteed unlimited calling plan. More recently we have begun to compete head-to-head with Verizon on price. We have also collocated our own advanced services equipment in Verizon central offices, and have begun to offer combined voice/DSL-based services utilizing UNE-P.

Local business customers in New York are also served using UNE-P. In New York, UNE-P is available beyond federal requirements (to serve business customers up to 18 lines), a position the New York Public Service Commission fully supported because of UNE-P's critical importance in jump-starting competition. This enables CLECs to gain a sustainable foothold in the local business market, and fosters the deployment of competitive facilities to support that base. It also enables AT&T to acquire business customers without the service degradation of individual loop "hot cuts," and then to move customers to our own facilities through a managed bulk conversion process.

Between December 2000 and June 2001, the number of CLEC access lines increased in New York by 368,319 – a market share gain of 3%. Similar gains were made in Illinois, Texas and Michigan. Those gains are attributable largely to the availability of UNE-P as a market entry vehicle. Indeed, AT&T itself uses UNE-P to serve approximately 1,000,000 local residential lines in New York alone.

While these accomplishments are significant, these gains have done little to erode the broad and resilient local monopolies the ILECs continue to maintain. CLEC facilities are modest at best when compared to the ubiquitous ILEC networks that were deployed over nearly a century of government protected monopoly, and they pale in the face of the daunting technical and economic hurdles that remain for further entry into local markets. The fact is that competitive carriers remain dependent on ILEC facilities to reach a sustainable body of local customers. And even where AT&T and other CLECs have or can economically deploy their own switches and other network facilities to provide local and advanced services, they remain dependent on essential loop facilities that the ILECs cannot provision in quantities or at service levels that support facilities-based competition.

If we are ever to enjoy full facilities competition in the local market like that which prevails in the long distance market, federal and state regulators need to maintain the existing national list of UNEs and UNE-P and ensure that existing barriers to facilities deployment are eliminated. As a threshold matter, the ILEC loop – perhaps the most essential UNE needed by facilities-based competitors – needs to be priced and provisioned in a manner that permits competition. Indeed, the Bell companies have lately been attempting to increase their loop rates and hot cut charges, a move that would directly undermine facilities-based competition. Moreover, they continue to provision

voice grade loops using manual processes that increase costs, degrade quality, and constrain the number of lines competitors can serve.

By contrast, systems that enable customers to switch long distance carriers are fully automated, support virtually unconstrained volumes at superior quality, and generally cost a small fraction of what the Bells charge to migrate customers to competitors' switches. And ILECs and long-distance competitors are not faced with the line or use restrictions to which local market competitors have been subjected. Until local loops are provisioned in a comparable manner, prospects for facilities competition will be radically constrained and dependence on ILEC switches and other UNEs unavoidably extended.

Critically, there are numerous reasons why it may be infeasible for any competitor to deploy alternative facilities, ranging from anticompetitive pricing of loops, collocation and transport, to inadequate provisioning of UNEs, to the lack of scale and scope economies, and retail price regulation. These issues are necessarily market (and sometimes customer) specific, inherently local in nature, and not susceptible to a one-size-fits-all solution. For this reason, AT&T respectfully urges the Commission not to eliminate or impede access to any UNE without a specific state commission finding that the "impair" requirements of Section 251 no longer apply and that competition will not be harmed by eliminating access to the subject UNE in the given state.

Moreover, and contrary to the BOC's claim, UNE unbundling requirements have not hindered network investment by the BOCs or facilities deployment by CLECs. The fact is that New York -- the state with the greatest amount of UNE-P based local competition -- also enjoys enormous facilities-based competition. This not only demonstrates that CLECs will invest in alternative facilities whenever and wherever it is economically and technically feasible to use them to provide service profitably, it dramatically underscores the fact that the availability of UNEs to acquire and grow a customer base actually promotes facilities-based investment. This is consistent with the Commission's own findings in the *UNE Remand Order* that the availability of UNEs is an essential precondition to facilities-based competition, and is unsurprising in light of telecommunications history, which also demonstrates that the resale of incumbent facilities is an essential first step toward meaningful facilities-based competition. That is precisely how the competitive long distance industry evolved and, in fact, that is what the Bell companies themselves are doing as they enter interLATA markets upon grant of Section 271 applications.

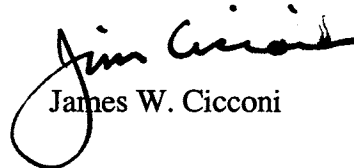
Indeed, ILECs well understand that UNEs lead to broader and more effective facilities-based competition by CLECs. That is why they have responded with greater per line investments in their networks in states with the highest level of UNE-P entry -- New York, Texas and Georgia -- than in comparable states such as Massachusetts and New Jersey where UNE-P based competition has yet to emerge.

Tomorrow, AT&T and other carriers will submit extensive evidence that demonstrates, unequivocally, that competitors will be impaired without access to

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incumbent network facilities at cost-based prices and that continued access to UNEs is necessary if the competitive local exchange industry is to remain viable. I have attached to this letter a brief preview of what our comments will show. I urge you to consider carefully the record developed in the proceeding before you and implement a public policy that fosters competition and consumer choice in all its forms.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Cicconi", with a large, stylized loop at the end of the signature.

James W. Cicconi

cc: Commissioner Abernathy
Commissioner Copps
Commissioner Martin